

WETLANDS COUNCIL

MINUTES

March 13, 2012

The Wetlands Council met on Tuesday, March 13, 2012 in Rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Ryan Crosbie, Carol Henderson, James Kennedy, Seth Prescott, Russ St. Pierre, Thomas Sloan, Robert Snelling, and David Thompson

Absentees: Councilors: Sharon Champagne and Susan Slack

Also present were: Paula Scott, Appeals Clerk and Carolyn Guerdet, Council Clerk.

The regular Wetlands Council meeting was called to order by Chairman Kimball at 8:05 a.m. with introductions and a quorum present. Hearing scheduled for 9 a.m. was cancelled.

1. **Approval of Minutes**

- ***Councilor Thompson made a motion to approve the February 14, 2012 minutes with corrections, second by Councilor Crosbie. Motion passed unanimously.***

2. **Public Input:** None

3. **Status of Appeals**

Paula Scott, Appeals Clerk, reviewed the following appeals:

I. New Appeals

Docket No.: 10-31 WtC – Larry Crocker

Subject: 10/24/10 Denial of Reconsideration regarding a permit issued to Christopher Hemingway, File #2009-03021

Presiding Officer: Not Assigned

Action: Nov. 4, 2010, the Wetlands Bureau received a letter from Mr. Crocker purporting to appeal the Decision on Reconsideration. Because it was improperly addressed and incomplete it was never received in the office of the appeals clerk. Appeal Clerk received the appeal on 1/3/12 from the bureau. Letter was issued by Legal Coordinator on 2/13/12. 2/17/12 notice sent regarding Council's plan to discuss at the Mar.13, 2012 meeting the timeliness of the appeal. Mr. Crocker was in attendance and gave his statement regarding sending the appeal. Mr. Hemmingway shared when he became aware it was under appeal. Discussion was held.

- ***Councilor Sloan made a motion to accept the appeal as timely filed, second by Councilor St. Pierre. Motion passed unanimously.***

Docket No.: 12-02 WtC – Rene Montplaisir & Barbara Fraser

Subject: 12/30/11 Administrative Order No. 11-037 WD

Presiding Officer: Not assigned

Action needed: Appeal filed timely on 1/20/2012, issued receipt of appeal letter. Council to accept or decline appeal today.

- ***Councilor St. Pierre made a motion to accept the appeal, second by Councilor Snelling. Motion passed unanimously. Discussion held.***

Docket No.: 11-11 WtC – Robert M Pinato

Subject: 8/30/11 Rescission of Administrative Order No. 10-025 WD

Presiding Officer: Not assigned

Action needed: Appeal filed timely on 9/29/11. Rec'd Motion to Summarily Dismiss Petition on 10/5/11. Council to act on Appeal and Motion at Nov. 8, 2011 Council Meeting. Received Objection to Motion to Summarily Dismiss on 10/14/11. Council voted to table this appeal until further action is taken on Docket No. 10-20 WtC through court action. Council will need to accept or decline appeal and/or act on Motion to Summarily Dismiss Petition.

II. Decisions that need to be written/finalized and issued.

Docket No.: 07-09 WtC - Derry Conservation Commission

Subject: 4/24/07 Decision on Reconsideration Denial, Wetlands File No. 2006-00773

Presiding Officer: Seth Prescott assigned by AGO

Status: Hearing was scheduled for Dec. 13, 2011 at 10 a.m. Issued notice of hearing time change on Nov. 9, 2011. 12/8/11 received Assented to Motion to Continue. 12/8/11 Motion Granted and hearing was held Feb. 28, 2012 @ 9 a.m. Decision and order to be issued within 90 days (5/28/12).

Docket No.: 08-04 WtC - Porter Trust

Subject: 12/12/07 Decision on Reconsideration, Wetlands File No. 2006-02705

Presiding Officer: Chip Kimball assigned by AGO on January 5, 2011

Status: On June 14, 2011, Council voted to deny LBC's Motion to Dismiss. Decision and order sent on 7/14/2011. Order Requesting Legal Memorandum was issued on 12/13/11. 1/11/12 rec'd Assented-To Motion to Extend Deadline Requesting Legal Memorandum Regarding Abutter Notification. 1/12/12 issued Ruling Granting Motion to Extend Deadline Requesting Legal Memorandum.

Docket No.: 09-07 WtC and 09-08 WtC - Lake Sunapee Protective Association (LSPA) and Town of Newbury

Subject: 1/7/09 Shoreland Impact Permit issued by DES to the NH Fish and Game for the Wild Goose Site in Newbury.

Presiding Officer: Chip Kimball appointed by AG on 11/16/11

Recused: Larry Ballin, Carol Henderson, and James Kennedy

Status/Action: Draft Order was before the council 1/10/12, and was adopted. Decision and Order was issued and mailed on 1/10/12. 2/9/12 received Motion for Reconsideration. 2/14/12 received Fish & Game and DES' Objection to Motion for Reconsideration. Council to act on Motion and Objection today. Discussion and ruling was continued until later in the meeting.

Docket No.: 09-25 WtC - Town of Hooksett

Subject: 5/11/09 Wetlands and Non-Site Specific Permit, Permit No. 2008-02016

Presiding Officer: Chip Kimball assigned by AGO on October 27, 2010

Recused: Larry Morse

Status: Rescheduled Hearing for Oct. 25, 2011 at 9 a.m. Draft order was before the council 12/13/11, and was adopted. Decision and Order on Notice of Appeal was issued on Dec. 13, 2011 and mailed. 1/12/12 received Motion to Reconsider. 1/20/12 received via email Objection to Motion to Reconsider and on 1/24/12 received council's 15 copies. The Council denied the Motion to Reconsider on 2/14/12.

Docket No.: 09-35 WtC – Town of Newbury

Subject: 9/18/09 Decision on Reconsideration, Wetlands File No. 2008-02781

Presiding Officer: Chip Kimball appointed by AG on 11/16/11

Recused: Larry Ballin, Carol Henderson, James Kennedy

Status/Action: Deliberations held on June 14, 2011. Draft order was before the council 1/10/12, and was adopted. Decision and Order was issued and mailed on 1/10/12. 2/9/12 received Motion for Reconsideration. 2/14/12 received Fish & Game and DES' Objection to Motion for Reconsideration. Council to act on Motion and Objection. Discussion and ruling was continued until later in the meeting.

Docket No. 10-04 WtC – Thomas J. Murray Appeal

Subject: 12/28/09 Denial of Application, Wetlands File No. 2007-00187

Presiding Officer: Chip Kimball (assigned by AGO on October 27, 2010)

Status: Hearing was held Jan. 24, 2012 @ 9 a.m. The Council adopted the Ruling on Motion to Reconsider which was denied and issued on 2/14/12.

III. Hearings or PHCs Pending

Docket No. 08-20 WtC – Anthony Pivero

Subject: 02/19/08 Administrative Order No. 08-007 WD

Presiding Officer: David Conley appointed by AG on 11/17/11

Status: Received Motion for Reconsideration on 10/26/11. On Nov. 1, 2011, a letter was mailed explaining the Motion for Reconsideration is insufficient and gave 30 days to correct the insufficiencies. Received the corrected filing of Motion for Reconsideration on 11/7/11. Council granted Motion for Reconsideration. PHC held Dec. 12, 2011. PHO was issued on 12/12/11 with a hearing scheduled for May 8, 2012 @ 9:00 a.m., notice given per PHO.

Docket No. 09-36 WtC – Brendan and Dana Keegan

Subject: Administrative Order No. 09-22 WD dated April 6, 2009

Presiding Officer: Chip Kimball assigned 10/31/11

Status: PHC was scheduled for 11/28/11 @ 9 a.m. Nov 29, 2011 rec'd Motion to Continue Pre-hearing Conference. Motion was Granted and PHC was rescheduled to Dec. 16, 2011 @ 9 a.m. 12/16/11 Notice given by PHO, hearing scheduled for May 22, 2011 @ 9:00 a.m.

Docket No. 10-14 WtC – Akwa Marina Yacht Club

Subject: 6/11/10 Decision on Reconsideration, Wetlands File No. 2009-01047

Presiding Officer: David Conley, Esq. appointed by AG on 12/22/11

Status: Written ruling on Motion to Continue was issued on Nov. 8, 2011. 11/14/11 received Supplement to Appeal. Hearing Notice was issued on 12/9/11. Rescheduled hearing for Feb 14, 2012 @ 9 a.m. Jan 4, 2012, appellant filed Assented-To Motion to Continue. Jan 9, 2012, PO granted Motion to Continue. Hearing has been rescheduled to June 12, 2012 @ 9 a.m., notice given 1/18/12.

Docket No. 10-29 WtC – Constance Klefos Trust

Subject: 7/14/10 Denial of Request for Reconsideration of issued permit

Presiding Officer: David Conley, Esq. assigned 10/31/11

Status: Appeal Accepted at 10/11/11 meeting. 10/27/11 Applicant filed Motion to Summarily Dismiss Appeal. 11/3/11 Appellant filed Objection and Answer to the Motion to Summarily Dismiss. Order on Motion to Summarily Dismiss was issued on 12/9/11 and mailed on 12/13/11. PHC scheduled for Jan. 18, 2012. Hearing scheduled for June 26, 2012 @ 9 a.m., notice given per PHO issued on 1/18/12. 3/2/12 received Assented-To Motion to Extend Filing Period for Witness & Exhibit Lists.

Docket No. 10-30 WtC – Dana Belletete

Subject: 08/27/10 Administrative Order No. 10-026 WD

Presiding Officer: David Conley, Esq appointed 12/19/11

Status: This appeal was recently discovered in the records of the prior appeals clerk. It appears that the Petition was timely filed however it is insufficient. On 10/31/11 a receipt of appeal letter was sent with an explanation about what appeared to have happened with the appeal. On 11/3/11, insufficient appeal letter was mailed with 30 days to correct the insufficiencies. 11/28/11 received revised Petition for Appeal. Receipt of revised appeal letter was sent 12/7/11. Council accepted appeal on 12/13/11, notice sent on 12/16/11. PHC was held on Feb. 15, 2012. Appearance for Linda Magoon was filed on 2/13/12. Hearing scheduled for July 10, 2012 at 9 a.m., notice given per PHO on 2/15/12.

Docket No. 11-02 WtC – Kathryn Wolf

Subject: 01/24/11 Decision on Reconsideration of File #2004-02929 (granting amended wetland application for Norman Davis)

Presiding Officer: David Conley, Esq appointed 12/19/11

Status: This appeal was recently discovered in the records of the prior appeals clerk. It appears that the Petition was timely filed however, it was insufficient. On 11/22/11, I sent a receipt of appeal letter with an explanation about what appeared to have happened with the appeal and I also sent a insufficient appeal letter. On 11/30/11, I received a revised Petition for Appeal. On 12/7/11, sent receipt of revised appeal. Council accepted appeal on 12/13/11. 1/12/12 changed name of appeal to correctly reflect appellant's name. PHC held Feb. 15, 2012. Hearing scheduled for July 24, 2012 at 9 a.m., notice given per PHO on 2/15/12.

Docket No. 11-03 WtC – Joseph and Patricia DeVelis

Subject: 1/25/11 Administrative Order No. 11-002 WD

Presiding Officer: Ryan Crosbie assigned by AGO on May 2, 2011

Status: Rulings on Motion to Extend Time and Motion to Modify PHO were issued on Nov. 2, 2011 and mailed on Nov. 3, 2011. Hearing was set for March 13, 2012 @ 9 a.m. 12/27/11 Received DES' and Appellant's Witness and Exhibit Lists. 3/9/12 Motion was granted and notice sent. Hearing scheduled for today is continued. Councilor Crosbie will talk with Atty. English as to the correct next steps.

Docket No. 11-06 WtC – John and Sharon Graham

Subject: April 11, 2011 Appeal of Administrative Order No. 11-014 WD

Presiding Officer: David Conley, Esq. appointed on 1/19/12.

Status: Council accepted the appeal letter, notice was sent on July 22, 2011. 2nd PHC held Feb. 15, 2012. Hearing scheduled for April 10, 2012 at 10 a.m. 2nd Notice given per PHO on 2/15/12.

Docket No. 11-09 WtC – Thomas Morrissey and Margaret Russell, et al

Subject: 1/11/11 Wetlands Permit #2009-01574, Town of Lyme

Presiding Officer: Chip Kimball assigned by AG on 9/16/11

Recused: Jim Kennedy

Status: 9/27/11 Ruling was issued on Request to Stay. PHC scheduled for 10/26/11. Hearing scheduled for March 27, 2012 at 8 a.m. Received on 12/12/11 per PHO the Supreme Court's Dec. 8, 2011, decision in Thomas Morrissey et al. v Town of Lyme, NHDES and NH F&G. 12/19/11, Appellant sent letter informing the Council that the Appellant has filed for a Motion for Rehearing with the Supreme Court. 1/18/12 received notice that the Supreme Court denied the Motion for Reconsideration. 2/2/12 received applicant's Motion to Dismiss. Presiding Officer to act on Motion at 3/13/12 meeting. 2/16/12 received Appearance for Christopher Aslin was filed as co-counsel for the appellant. Also received appellant's Objection to Town of Lyme's Motion to Dismiss. 2/24/12 received the Town of Lyme's Reply to Objection to Motion to Dismiss. 3/2/12 received Petitioner's Response to Town's Reply to Objection to Motion to Dismiss. 3/9/12 issued Ruling on Motion to Dismiss and Summary Judgment. The appeal is summarily denied. Discussion was held as to ruling of law.

Docket No.: 11-12 WtC – George R. and Denise Scholl

Subject: 09/22/11 Denial on Reconsideration for Wetlands Permit #2011-00314

Presiding Officer: David Conley, Esq appointed 12/19/11

Action needed: Appeal was filed timely on 10/21/11. Attorney Hanna filed an appearance for the appellant on 10/21/11. Receipt of Appeal letter was issued on 10/21/11. Council accepted appeal on 12/13/11. PHC was held Feb. 15. Hearing scheduled for August 14, 2012 at 10 a.m., notice given per PHO on 2/15/12. 2/24/12 received appellant's request for certified copy of DES' file.

Docket No.: 11-13 WtC – R. Michael Mayo, et al.

Subject: 10/18/11 Denial of Request for Reconsideration

Presiding Officer: David Conley, Esq. appointed on 1/19/12

Recused: David Thompson

Action needed: Appeal was filed timely on 11/17/11 but was insufficient. Sent insufficient appeal letter on 11/17/11 and received revised Petition for Appeal on 11/23/11. Receipt of revised appeal letter was sent 11/28/11. Appeal accepted at 1/10/12 meeting. PHC scheduled for March 12, 2012 at 9 a.m. 2/28/12 received applicant's copy of notice that appeal had been accepted by the Council, by return mail which states he is temporarily away. 3/6/12 received phone call from applicant regarding appeal. 3/12/12 received appearance from Attorney Regina Nadeau for the applicant. PHC was held on 3/12/12 and hearing is scheduled for Sept. 25, 2012, with notice given per PHO on 3/12/12.

Discussion held regarding amount of time allowed for hearings and findings of facts and rulings of law being held open after a hearing. Chairman Kimball will have a discussion with Attorney English.

8:55 Councilor Henderson arrives.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

Docket No.: 09-21 WtC - John Penaskovic

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-040 WD

Presiding Officer: Chip Kimball

Recused: Larry Morse

Status: Appellant wants this appeal to remain open until "Gary Goodspeed completes his portion of the work agreed upon in the restoration plan agreement dated July 1, 2010." John will withdraw this appeal when Mr. Goodspeed receives a letter of compliance and a release of recordation.

Docket No. 10-10 WtC – Donald Lee

Subject: 5/23/10 Decision on Reconsideration, Wetlands File No. 2008-01253

Presiding Officer: Chip Kimball assigned by AGO on January 26, 2011

Status: Hearing scheduled for Jan. 10, 2012 per notice of PHO issued on 8/31/11 Rec'd Suggestion of Bankruptcy on Dec. 5, 2011. On 12/6/11 rec'd withdrawal of appearance from appellant's attorney and issued Order for Continuance. Appeal is Stayed due to filing in Bankruptcy Court.

Docket No. 10-20 WtC – Robert Pinato

Subject: August 19, 2010 Administrative Order, Administrative Order No. 10-025 WD

Presiding Officer: Ryan Crosbie

Status: Presiding Officer issued ruling on Motion for Reconsideration on Nov. 2, 2011, which was granted. Interim Ruling on Reconsideration was issued on 12/1/11, staying the council's decision on reconsideration until the legal and venue considerations are defined. Parties are to provide the Council with the Superior Court decision within 5 days of issuance.

V. Misc.

Break taken at 9:05

Meeting continued at 9:10

**5. New Business
Wetlands Bureau Report**

Lori Sommer, Wetlands Mitigation Coordinator

Lori gave a summary of the ARM Fund and the new application process. There will be one grant announcement each year now, in March. There is now a pre-proposal by April 30th that will weed out the ones that won't be considered. Then August 10, 2012 is the final deadline and November final decisions will be announced.

Water Supply Land Protection Funds in the amount of 3 million dollars have been made available through the DOT I93 Widening Project. This will be available to 5 communities along the Merrimack River watershed and the Lake Massabesic watershed.

Lori has been writing a document regarding the new rules for mitigation. March 2nd the document was submitted to the Army Corp and is now out for public comment. She will email the link to the document.

Councilor Prescott arrives at 9:15.

4. Old Business

The draft letter to Commissioner Burack regarding systemic issues was reviewed.

Council Leadership meeting was held on March 9th which Chairman Kimball and Vice Chairman Crosbie attended. An appeals checklist is being drafted. The Commissioner's office is attempting to set up a meeting with Council Chairs, Attorney English, Hearings Officer – Dave Conley and Paula to discuss issues regarding the appeals process and how it is going. Also discussed were legislation, the vacant seats, and departments whose designees don't show up. Next step is working on a consolidated and consistent set of rules for all 4 councils.

Susan Slack, Bob Snelling, Jim Kennedy will be sent the link to the Greenland and Garrison Place decisions as they address the council's authority. Chairman also encouraged them to look at RSA21:05 (a) and (n).

Chairman Kimball gave a reminder that the council needs to stay objective through these hearing processes.

Docket No.: 09-07 WtC and 09-08 WtC - Lake Sunapee Protective Association (LSPA) and Town of Newbury and Docket No.: 09-35 WtC – Town of Newbury

Councilors Henderson and Kennedy left the meeting as they were recused.

Review and discussion of the Decision and Order as written by Chairman Kimball.

- ***Councilor Crosbie made a motion to adopt the ruling, second by Councilor Thompson. Motion passed unanimously.***

6. **Next Meeting** –

Next regular meeting will be Tuesday, April 10, 2012 beginning at 9 a.m. The John and Sharon Graham hearing will be held at 10 a.m.

Reminder of the Attorney General's Training to be held on March 30th.

7. **Adjournment**

- ***Councilor Sloan made a motion to adjourn, second by Councilor Crosbie. Motion passed unanimously.***

Meeting adjourned at 10:13 a.m.

